

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MID-AMERICA PIPELINE COMPANY,
LLC,

Plaintiff,

v.

WILSON EXCAVATING, INC., and
DALE D. WILSON,

Defendants.

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8:09CV370

MEMORANDUM AND ORDER

This matter is before the court on plaintiff's motions in limine, Filing No. [129](#) and Filing No. [132](#). The motion in limine regarding the opinions of César de León, Filing No. [132](#), has been resolved by the magistrate judge and the parties, as set forth in the Pretrial Order, Filing No. [141](#), Page ID 715, page 6. Accordingly, the court will deny that motion as moot.

With regard to the motion in limine regarding depth of cover, Filing No. [129](#), plaintiff asks this court to prohibit defendants from presenting any evidence, statements or offers of proof, or asking questions in front of the jury regarding the "depth of cover," or how far below the stream bed in the drainage ditch the damaged pipeline(s) were located on the Widman property. Apparently the pipeline in question in this lawsuit was built in 1969. Ground cover regulations were passed in 1970. Defendants now argue that the ground cover was insufficient, causing them to hit the pipeline. Defendants' expert wants to testify that the pipeline should have been buried with 36 inches of cover and was probably not covered to that depth at the time of the incident. Defendants claim that plaintiff was contributorily negligent for failing to have sufficient ground cover over the pipeline below

the drainage ditch. Defendants contend they will offer evidence that it was the custom and practice of the industry to place these pipelines a certain number of inches below the streams, ditches or water courses. The defendants contend they are entitled to establish custom and practice as it relates to the standard of care, relying on [Anderson v. Malloy, 700 F.2d 1208, 1212 \(8th Cir. 1983\)](#). The court, after reviewing the arguments and the evidence, is inclined to permit the evidence to go forward on this issue. However, the court will hear arguments in this regard prior to trial on July 18, 2011, and will issue a final ruling at that time.

THEREFORE, IT IS ORDERED:

1. Plaintiff's motion in limine, Filing No. [132](#), is denied as moot pursuant to the entry in the Pretrial Order, Filing No. [141](#).

2. Plaintiff's motion in limine, Filing No. [129](#), is tentatively denied, subject to a final determination on July 18, 2011, before trial begins.

DATED this 7th day of July, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief United States District Judge

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